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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
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Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)

Implementation of Section 309(j))
of the Communications Act--)
Competitive Bidding)
)

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

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COMMENTS

Source One Wireless, Inc. ("Source One"), an Illinois corporation, submits these its Comments in connection with the above-referenced Notice of Proposed Rule Making ("NPRM" or "Notice"), FCC 96-52, released February 9, 1996.

BACKGROUND

On February 9, 1996, the Commission released its NPRM in the above-referenced proceeding, proposing geographic licensing for 931 MHz, 929 MHz, Lower Band CCP Channels and Shared PCP Channels. The Commission also proposed major trading areas ("MTAs") as the service area unit for the geographic licensing for paging. In connection with incumbents, the Commission proposed that these licensees would continue operating under existing authorizations but that no incumbent licensee would be allowed to expand beyond its existing interference contour and into the geographic licensee's territory, without the consent of the geographic licensee. Other issues such as coverage requirements and co-channel interference protection were also proposed. Finally, the

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Commission proposed and sought comment on competitive bidding issues relating to the proposed geographic service area.

Source One's comments relate to the 929 MHz and 931 MHz frequencies only and to the areas of geographic licensing and auctions.

INTRODUCTION

Source One is a paging company based in Illinois. It began as a paging operator in 1993 in the Chicago metropolitan area and in portions of six states (Minnesota, Wisconsin, Illinois, Indiana, Michigan and Missouri). It now has expanded to many locations through-out the United States, chiefly on the frequency 931.1875 MHz.

DISCUSSION

I.

GEOGRAPHIC LICENSING

Source One agrees with the Commission that licenses should be granted on a geographic basis. Such an approach would give greater flexibility to the operator to respond to its subscribers, as well as to reduce the administrative burden to the Commission.

Source One also agrees that the paging systems on 931 and 929 MHz frequencies should be treated similarly, should have the same Rules and Regulations and should be given the same flexibility as cellular and PCS frequencies relative to geographic licensing.

However, in connection with service areas, Source One proposes that an MSA/RSA or a Basic Trading Area ("BTA") approach would be more equitable to the incumbent operators, many of whom are small entrepreneurs who have built up their service in metropolitan areas but may not have the capital to step up to an MTA service area, which the Commission proposes. Indeed, as Communications Daily, Vol. 16, No.48, reported on March 11, 1996, even the A and B Blocks PCS licensees have been

seeking "to partition existing licenses, swap territories or sell outright...or shift strategies to concentrate on smaller regions." This may be an indication that an MTA may be too large a coverage area, even for larger companies with more resources.

As the Commission is aware, Congress was concerned about efforts to promote economic opportunity and competition, to avoid excessive concentration of licenses and to disseminate licenses to a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. See Section 309(j)(2)(B) of the Communications Act of 1934, as amended. The geographic licensing concept can only truly be geared to the smaller entrepreneurs if smaller geographic service areas are utilized. As one can see from the current C Block auction process, a typical small business cannot compete in a contest to acquire an MTA. While an MTA basis may be more efficient from a licensing standpoint, the broader considerations of promoting economic opportunity and competition require a smaller geographic licensing area.

Source One also urges the Commission to develop a guideline for exemptions of availability of the geographic service area, based on the coverage of an incumbent operator. For example, an operator with 70% coverage of the geographic area would certify this coverage by application to the Commission and the Commission would then grant a license to the incumbent for that service area.

II.

CO-CHANNEL INTERFERENCE PROTECTION

Source One also proposes that the Commission provide interference protection to 929 MHz licensees in the same manner as to the 931 MHz licensees. However, Source One takes issue with the proposed standard to previously licensed facilities. Since these proposed standards are based on an average of height and power (1,000 watts, 1000 feet), as the height is lowered, the service and interference contours are reduced. This, in essence, contracts previously authorized areas. To alleviate this inequity, Source One

submits that existing facilities be grandfathered with a 20 mile service area contour and a 50 mile interference contour. To do otherwise would be a de facto modification of an licensee's authorization, a taking, which raises serious equitable considerations, as well as retroactivity issues. See Bowen v. Georgetown University Hospital, 488 U.S. 204, 209 (1988). In addition, from a practical standpoint, business decisions have been made and money invested, in reliance on the existing standards. Compare 47 U.S.C. 316.

III.

COMPETITIVE BIDDING ISSUES

While Source One agrees with the concept of geographic licensing, it cannot support the Commission's proposal to auction these already licensed frequencies. First, the frequencies are mature frequencies. The Commission itself stated in the NPRM at 5, that some of these frequencies were allocated as long ago as 1949, with the most recent allocations made in 1982. Further, the Commission stated that Common Carrier Paging ("CCP") channels are "heavily licensed, particularly in major markets." NPRM at 11. In connection with PCP channels, the Commission also states that "significant licensing already has occurred on PCP channels...As a result the 35 exclusive PCP channels are nearly as occupied as the 931 MHz CCP channels, and soon there may be insufficient spectrum available to allow coordination" in most major or mid-sized markets. NPRM at 12. Having set forth the state of these frequency bands, the Commission also states that incumbent licensees cannot relocate because there are no alternate channels. NPRM at 21.

Given these Commission statements, Source One is mystified about this effort to auction CCP and PCP channels, since there appears to be little, if any, spectrum available. Even given the Commission conclusion, based on its Competition Bidding Second Report and Order, 9 FCC Rcd 2348, 2359 (1994) and in the Part 22 Rewrite Order, 9 FCC Rcd 6513, 6536 (1994), that it has the authority to auction these frequencies, it appears to say -- as most of its opponents in this matter agree -- there may be no subject matter to auction. Further, the auctioning of "white space" could inhibit the

growth of the small to mid-sized operators and restrict their ability to respond to customer demand for increased coverage. In short, such a circumstance is not in the public interest and certainly would not have been anticipated by Congress. The prospect of federal revenues coming from this auction does not mitigate this damage to the public interest. Indeed, Congress admonished the FCC in Section 309(j)(7)a) of the Communications Act of 1934, that "The Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection."

CONCLUSION

Source One respectfully requests that the Commission take these Comments into consideration in connection with the proposed rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gladys L. Nichols, do hereby certify that on this 18th day of March, 1996, the foregoing **COMMENTS** were served to the following persons by first-class mail:

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